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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re XAVIER H., a Person Coming Under the Juvenile Court Law.	B218723 (Los Angeles County Super. Ct. No. CK74929)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. NANCY H., Defendant and Appellant.	

APPEAL from orders of the Superior Court of Los Angeles County. Stephen C. Marpet, Commissioner. Affirmed.

Marissa Coffey, under appointment by the Court of Appeal, for Defendant and Appellant.

Andrea Sheridan Ordin, County Counsel, James M. Owens, Assistant County Counsel, Melinda S. White-Svec, Deputy County Counsel, for Plaintiff and Respondent.

No appearance for Minor.

* * * * * *

Nancy H. (mother) appeals from the juvenile court's orders (1) summarily denying her Welfare and Institutions Code[1] section 388 petition seeking reunification services, and (2) selecting legal guardianship as the permanent plan for her son Xavier H., who was four months old when detained. Mother contends that respondent Los Angeles County Department of Children and Family Services (the department) did not provide her with adequate notice of the six-month review hearing at which her reunification services were terminated and the matter was set for a permanent plan hearing. We agree that mother did not receive proper notice of this hearing, but we also find that mother failed to make a prima facie showing that granting her reunification services would be in her son's best interests. We therefore affirm the court's order denying her section 388 petition without a hearing. We also affirm the court's order granting legal guardianship over Xavier to a maternal great-aunt, because mother presents no arguments or authorities mandating reversal of this order.

FACTUAL AND PROCEDURAL BACKGROUND

At the beginning of October 2008, the department received an anonymous referral that Xavier and mother were living with a woman, Winter P., and her one-year-old son, in a home where crack cocaine was being used by the women and gang members, who would come and go, in the presence of the children. The social worker and police went to the home of Ms. P., who denied the allegations of drug abuse, stated that mother and Xavier had lived with her for a month, that mother was now living on the streets and using drugs, but Ms. P. did not know where, and that she believed Xavier was living with his maternal grandfather. Ms. P. showed the social worker a file left behind by mother that revealed mother was on parole as a registered narcotics offender, and that identified two addresses for mother—one in Compton and one in Torrance.

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[1] Unless otherwise noted, all statutory references shall be to the Welfare and Institutions Code.

A maternal aunt who was living at the Compton address told the social worker that mother's whereabouts were unknown, but that she believed mother was living on the streets and using drugs. She confirmed that Xavier was living with his maternal grandfather in Torrance. The maternal grandfather told the social worker that he had been caring for Xavier for the past month and a half, since mother called him crying and asked him to pick up the baby because she could not get herself together. Though mother called to check on the baby, she never visited. The maternal grandfather thought that mother was living on the streets and using drugs, and stated that when he wanted to reach her, he would call Ms. P., who knew how to find her. He also stated that he thought mother might be staying in the same building as Ms. P. Another maternal aunt who was living with the maternal grandfather stated that mother had previously left Xavier with two different women who were living in the same building as Ms. P. The maternal grandfather did not know who the baby's father was, and did not think that mother knew either. A criminal records search revealed that the maternal grandfather had an extensive criminal history, including multiple arrests for possession and sale of a controlled substance, burglary, and an arrest for willful cruelty to a child in 2006. He was in prison from November 2006 through June 2008 for grand theft from a person and was on parole.

An earlier referral had been made in July 2008, in which an anonymous caller reported that mother was a "crack head" who left the baby in the care of others for days at a time, and that mother had been seen the prior night in the streets with the baby at 11 p.m. seeking drugs. The social worker at that time responded to mother's last known address in the Welfare Case Management Information System (WCMIS) on 41st Place in Los Angeles. Living at that address was another maternal aunt, who stated that mother no longer lived there, that she had not had contact with mother for several months, and that she was unaware of Xavier's location.

Xavier, who showed symptoms of drug withdrawal, was detained and placed into foster care. In October 2008, the department filed a section 300 petition on his behalf, alleging that mother had made an inappropriate plan for his ongoing care and supervision by leaving him with the maternal grandfather, and that mother had a six-year history of

illicit drug abuse and was using cocaine, which rendered her incapable of providing regular care for Xavier. At the detention hearing, the court ordered that Xavier remain detained, and ordered the department to conduct due diligence on mother and to schedule a team decision meeting with mother's relatives to see if any would be an appropriate placement for Xavier. The minute order for the detention hearing states that reunification services are to be provided, and that mother was not to have any visitation with Xavier until she contacted the department.

For the November 20, 2008 jurisdiction/disposition hearing, the department reported that mother's whereabouts remained unknown. On October 31, 2008, mother contacted the department stating that she had been arrested. A search of the Los Angeles County Sheriff's Department inmate locator reflected that mother was indeed arrested that day, and later reflected that mother was released from custody on November 4, 2008. The department reported that its due diligence search of mother, conducted on November 3, 2008, revealed six possible addresses for mother in Los Angeles, including a slightly different address on 41st Place. On November 13, 2008, the department sent notice of the jurisdiction/disposition hearing to all six addresses by certified mail.

Mother was not present at the jurisdiction/disposition hearing on November 20, 2008. The court sustained the petition, found that mother's whereabouts were unknown, and that the department had given proper notice. The minute order for the hearing states: "The mother is not initially allowed family reunification services per [§] 361.5(B)(1). The court, however, will allow the mother reunification services if she contacts DCFS before the next court hearing of 4-6-09. If the mother does contact DCFS, they are to provide her referrals for drug counseling, weekly drug testing, parenting class, and individual counseling."

In its status report for the six-month review hearing to be held on April 6, 2009, the department reported that Xavier had been placed in the home of a maternal great-aunt, and that she had reported that he was thriving. The social worker stated that the caregiver was able to provide Xavier with a safe and stable home, and the social worker had observed Xavier searching for the caregiver when out of his sight and smiling upon

her return. The caregiver was taking Xavier to visit the maternal grandparents on a monthly basis. Mother had made no attempt to contact Xavier. The caregiver wished to become Xavier's legal guardian, but was open to adoption if mother did not comply with the court's orders.

The social worker also reported that she had been unable to make contact with mother during this last period of supervision, and that she had mailed notices and letters to mother's "last known address." The record shows that on March 18, 2009 the social worker sent mother notice of the April 6, 2009 hearing to the 41st Place address from the WCMIS, which had a street address that was one digit off from that of the maternal aunt living on that street, and no apartment number was listed. The notice stated that the social worker recommended "[n]o change in orders, services, placement, custody, or status." The notice was returned.

The Los Angeles County Sheriff's Department inmate locator reflected that mother was arrested on January 6, 2009 and released on January 15, 2009. The inmate locator also reflected that mother had been incarcerated at the Lynwood Century Regional Detention Facility since March 4, 2009, with a court date set for April 30, 2009. On March 26, 2009, the social worker sent a letter to mother at the detention facility with the social worker's contact information, and informed mother that she needed to make contact by April 6, 2009 if she wanted reunification services to be provided. As of the writing of the report signed on March 31, 2009, mother had not contacted the social worker.

Mother was not present at the April 6, 2009 six-month review hearing. The bailiff informed the court that mother had been released from custody on April 2, 2009. The court terminated reunification services, set a permanent plan hearing pursuant to section 366.26 for August 3, 2009, and set a nonappearance progress report for May 21, 2009 to include the department's completed due diligence on mother.

On May 21, 2009, the department reported that mother was arrested on May 7 and being housed at the Lynwood Century Regional Detention Facility. The social worker attempted to personally serve notice on mother at the facility, but was told that mother

was on a work release order and that her address could not be provided. The social worker learned from the department of probation that mother might be residing at two locations—either with the maternal grandfather in Torrance or at an address in Los Angeles. The social worker was unable to physically locate the Los Angeles address. When the social worker tried contacting the maternal grandfather, she reached a maternal aunt, who stated that mother did not reside in the home, but occasionally used the address to receive mail. The aunt did not know mother's whereabouts, but stated that she would give the social worker's telephone number to mother if mother called. The social worker sent notice of the permanent plan hearing by certified mail to both the maternal grandfather's Torrance address and the address in Los Angeles that the social worker had been unable to locate.

Mother appeared at the August 3, 2009 permanent plan hearing and was appointed counsel. She was in custody at the time with an expected release date of December 14, 2009. At the hearing, mother filed a notification of mailing address, listing her mailing address as the Torrance address of the maternal grandfather. At the request of her attorney, the matter was continued to August 31. Mother was personally served at the hearing with notice of the continued section 366.26 hearing.

On August 28, 2009, mother filed a section 388 petition, alleging that the social worker's notice of the April 6, 2009 six-month review hearing was deficient because it did not inform mother that her reunification services would be terminated, and should have been sent to her place of incarceration. The petition also alleged that the letter sent to mother's detention facility was improper notice because it did not inform mother of the time and location of the hearing. An addendum by her attorney stated that in response to the social worker's letter, mother sent a letter requesting reunification services, but mother did not keep a copy of the letter. The addendum also stated that mother was bonded with Xavier. Documentation attached to the petition showed that mother had started reunification services while in custody. Mother asked that she be given reunification services or that they be reinstated because she was not properly noticed, and

that such a change would be in Xavier's best interests because the law requires parties to be properly noticed and a parent should be afforded an opportunity to reunify.

For the continued section 366.26 hearing, the department reported that on April 8, 2009, the social worker received a letter from mother, which included enrollment letters for parenting classes and drug education, but no copy of the letter was attached to the report. The social worker also stated that she made face-to-face contact with mother on July 14, 2009, and provided mother with notice for the section 366.26 hearing originally scheduled for August 3, 2009. Mother signed for receipt of the notice, and stated that she was still interested in reunifying with Xavier. It is unclear why this information was not provided to the court prior to the August 3 hearing.

Mother appeared with her attorney at the continued August 31, 2009 section 366.26 hearing. The court summarily denied mother's section 388 petition on the ground that providing mother with reunification services was not in Xavier's best interests. The court granted legal guardianship of Xavier to his maternal great-aunt, and allowed mother to have monitored visits with her son if the guardian was willing to transport him to mother's location. This appeal followed.

DISCUSSION

I. Section 388 and Standard of Review.

Section 388, subdivision (a) allows a parent to petition the court for a hearing to change, modify or set aside any previous court order or to terminate jurisdiction "upon grounds of change of circumstance or new evidence." Under subdivision (d), if it appears that "the best interests of the child may be promoted by the proposed change of order, . . . the court shall order that a hearing be held . . . ." (§ 388, subd. (d).) A section 388 petition is the proper vehicle to raise a due process challenge based on the issue of improper notice. (*Ansley v. Superior Court* (1986) 185 Cal.App.3d 477, 481, 487–488; *In re Justice P.* (2004) 123 Cal.App.4th 181, 189; *In re P.A.* (2007) 155 Cal.App.4th 1197, 1209.)

A section 388 petition is to be liberally construed in favor of granting a hearing to consider a parent's request. (Cal. Rules of Court, rule 5.570(a).) The parent need only make a prima facie showing to trigger the right to proceed by way of a full hearing. (*In re Marilyn H*. (1993) 5 Cal.4th 295, 310.) """A 'prima facie' showing refers to those facts which will sustain a favorable decision if the evidence submitted in support of the allegations by the petitioner is credited. [Citation.]" [Citation.]'" (*In re Aaron R.* (2005) 130 Cal.App.4th 697, 705.) "There are two parts to the prima facie showing: The parent must demonstrate (1) a genuine change of circumstances or new evidence, and that (2) revoking the previous order would be in the best interests of the children. [Citation.]" (*In re Anthony W.* (2001) 87 Cal.App.4th 246, 250; *In re Zachary G.* (1999) 77 Cal.App.4th 799, 806 ["section 388 contemplates that a petitioner make a prima facie showing of both elements to trigger an evidentiary hearing on the petition"].) If a parent presents any evidence that granting the petition would promote the best interests of the child, the court must order a hearing. (*In re Angel B*. (2002) 97 Cal.App.4th 454, 461.) But if the liberally construed allegations of the petition do not make a prima facie showing of changed circumstances and that the proposed change would promote the best interests of the child, the juvenile court need not order a hearing. (*In re Zachary G., supra,* at pp. 806–807; Cal. Rules of Court, rule 5.570(d).)

We review a juvenile court's summary denial of a section 388 petition for abuse of discretion. (*In re Aaron R., supra,* 130 Cal.App.4th at p. 705; *In re Anthony W., supra,* 87 Cal.App.4th at p. 250.) Under this standard, we must uphold the juvenile court's decision unless we determine from the record that the decision exceeded the bounds of reason. (*In re Brittany K.* (2005) 127 Cal.App.4th 1497, 1505.) """When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court." [Citations.]'" (*Ibid.*)

II. The Juvenile Court Did Not Abuse Its Discretion in Denying a Hearing on Mother's Section 388 Petition.

A. Change of Circumstances

Mother contends that she made a prima facie showing of a change in circumstances because she was not given proper notice of the April 6, 2009 six-month review hearing. We agree.

Notice of review hearings is governed by section 293. The statute requires that notice shall be served no later than 15 days before the hearing (§ 293, subd. (c)); shall contain a statement regarding any change in the custody or status of the child being recommended by the supervising agency (§ 293, subd. (d)); and shall be served by first class mail "addressed to the last known address of the person to be noticed or by personal service on the person" (§ 293, subd. (e)).

Here, the social worker sent notice of the review hearing to the address on 41st Place, with a street address that was one digit off from that of the maternal aunt living on that street, and without an apartment number listed. The notice was returned to the social worker. The department points out that this was the "last known address" for mother, and was therefore the only address to which the social worker was required to send notice. But it should have been obvious to the social worker that this address was slightly off from that of the maternal aunt who lived on that street. Even if the social worker had meant to contact the maternal aunt living on this street, the aunt had already informed the department months ago that she was not in contact with mother. The social worker was aware that mother had had more recent contact with the maternal grandfather, but no notice was sent to his Torrance address (the address mother later identified as her mailing address). Nor was any notice sent to the address of Ms. P., who apparently knew how to get in touch with mother. There is no evidence that the social worker ever contacted mother's probation officer, whose name and telephone number are included in the record.

Moreover, it is not clear why the social worker did not send notice to mother at the detention facility in Lynwood, where mother was being housed prior to the review

hearing. While the social worker did send mother a letter to the facility on March 26, 2009, this was less than 15 days before the hearing. Mother apparently received this letter and responded to it in writing. But the letter did not give mother notice of the address of the courthouse or of the time or department of the hearing, and was therefore inadequate.

Mother argues that even if she had received the formal notice that was sent to the 41st Place address on March 18, 2009, the notice was still defective because it did not indicate that mother's reunification services would be terminated, stating instead that the social worker recommended no change in orders, services, placement, custody or status. The court had previously ordered that mother was to receive reunification services if she contacted the department. But nowhere did the notice reflect that the department recommended that such services be terminated once and for all at the review hearing. We therefore agree with mother that she made a prima facie showing of new evidence sufficient to satisfy the first prong under section 388.

B. Best Interests of Child

Even when a parent satisfies the first prong under section 388, "a court may still deny a section 388 petition without an evidentiary hearing if the parent does not make a prima facie showing that the relief sought would promote a child's best interests." (*In re Justice P., supra,* 123 Cal.App.4th at p. 189.)

In her section 388 petition, mother failed to allege any facts supporting a prima facie showing that the best interests of Xavier would be promoted by reinstating her reunification services. The petition alleges that because the law requires parties to be properly noticed, it is in a child's "best interest that [a] parent be afforded an opportunity to reunify as required by law." A nearly identical argument was rejected in *In re Justice P., supra*, 123 Cal.App.4th at pages 190 to 191. That court recognized that "[i]f a missing parent later surfaces, it does not automatically follow that the best interests of the child will be promoted by going back to square one and relitigating the case. Children

need stability and permanence in their lives, not protracted legal proceedings that prolong uncertainty for them." (*Id*. at p. 191.)

The petition also alleges that while in custody mother had been actively participating "in programs which may lead to amelioration of conditions causing detention," and she argues this shows she loved her son and desired to work toward reunifying with him. But mother set forth no specific facts making a prima facie showing that granting her reunification services would be in Xavier's best interests. To the contrary, the record establishes that mother had not seen or talked to Xavier since approximately August 2008, when he was two months old. There is no evidence that she sent him letters or gifts or in any way attempted to provide for his needs. Thus, for nearly all of Xavier's life, he has not had any relationship at all with mother, who has repeatedly been in and out of jail and living on the streets. Moreover, there is no evidence that mother has overcome her longstanding drug addiction; she has not completed any drug rehabilitation program or participated in random drug testing. Meanwhile, Xavier has been happy and thriving in the home of his maternal great-aunt.

Even liberally construing the petition's allegations, we find that Mother failed to meet her burden of making a prima facie showing that the requested modification would promote Xavier's best interests.

III. Challenge to Legal Guardianship.

In the last section of her opening brief, mother contends that she is "entitled to challenge the orders and findings made at the referral hearing that was conducted on April 6, 2009," during which the court set the matter for a permanent plan hearing in August, because she was not provided with writ notice as required by law.

Section 366.26, subdivision (l) provides that an order setting a section 366.26 hearing is not appealable unless the parent has filed a petition for extraordinary writ review in a timely manner, the petition substantively addressed the specific issues to be challenged with an appropriate record, and the petition was summarily denied or

otherwise not decided on the merits. (§ 366.26, subd. (l)(1); Cal. Rules of Court, rule 8.452; *In re Julie S.* (1996) 48 Cal.App.4th 988, 990.)

Mother points out that her whereabouts were unknown at the time of the April 6, 2009 hearing, she was not present at the hearing, and she was not appointed counsel. There is nothing in the reporter's transcript of the hearing showing that the juvenile court directed the clerk to provide mother with writ notice or that it identified the address to which the notice should be sent. The record does not include a clerk's certificate of mailing of mother's right to file a writ petition. The department concedes that it does not know if the clerk mailed the notice of intent to file a writ petition, but relies on Evidence Code section 664, in which it is presumed that the clerk regularly performed his or her professional duties. But the problem is that because there were different addresses at which mother could potentially be reached, and we cannot tell from the record to which address writ notice, if any, was sent, we are unable to conclude that mother received proper writ notice.

Even assuming that mother is allowed to challenge the findings and orders in this appeal made at the April 6, 2009 hearing, the only order she addresses on appeal is the termination of her reunification services, which we have addressed in connection with her section 388 petition. Although mother's notice of appeal states that she is appealing from the court's order selecting legal guardianship, and she also states at the beginning of her opening brief that she is challenging this order, which was made at the section 366.26 hearing, mother presents no arguments or authorities on the issue of legal guardianship. Because it is an appellant's burden to raise claims of reversible error or other defect and to "present argument and authority on each point made" (*County of Sacramento v. Lackner* (1979) 97 Cal.App.3d 576, 591; accord, *In re Marriage of Ananeh-Firempong* (1990) 219 Cal.App.3d 272, 278), we may treat the issue as having been abandoned. (*Landry v. Berryessa Union School Dist.* (1995) 39 Cal.App.4th 691, 699–700.)

DISPOSITION

The orders summarily denying mother's section 388 petition and granting legal guardianship are affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, Acting P. J.

DOI TODD

We concur:

_____, J.

ASHMANN-GERST

_____, J.

CHAVEZ